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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANTS (In Jail)

1. Beko Pandroo alias Pandu, Son of Bhima alias Bhadroo, aged 50 years, resident of village Paneda, at present Bhairamgarh, P.S. Bhairamgarh, District Dantewada, Bastar.

2. Poyami Bandi, aged 37 years, son of Poyami Mangdu, resident of village Mongia, P.S. Bhairamgarh, District Dantewada, Bastar (CG).

-Versus-

RESPONDENT

The State of Chhattisgarh, Through P.S. Bhairamgarh, Distt. Dantewada.

(Appeal under Section 374(2) of the Cr.P.C.)

Division Bench :

Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, JJ

26-9-2007

Shri S.L. Bajaj, counsel for the appellants.

Shri Ashish Shukla, Addl. Public Prosecutor for the State.

Oral judgment dictated on *dias*.

Sunil Kumar Sinha, J

This appeal is directed against the judgment of conviction and order of sentence dated 20-2-2002 passed by the Third Additional Sessions Judge, Bastar, Jagdalpur, in Sessions Trial No.13/2001 whereby the accused/ appellants were held guilty of the offence punishable under Sections 302 read with Section 34 & 201 of the Indian Penal Code and sentenced [redacted] to undergo imprisonment for life & to undergo R.I. for two years. The sentence

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

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awarded under Section 201 of the Indian Penal Code has been directed to be adjusted in the life imprisonment awarded to the accused persons.

2) Case of the prosecution, in brief, is that on 25-11-2000 at about 12.30 p.m., Sonaru (PW-2) saw that the dead body of an unknown person is lying in Bandlapal Gali. He saw injuries on the body; therefore, he went to school and told about the same to one Mandal Guruji, who directed him to go to Police Station to lodge report. On this, he went to Police Station & lodged First Information Report under Ex.P/4. On the said report, investigation commenced. Panchnama on the dead body was prepared under Ex.P/19. The dead body was sent for postmortem examination under Ex.P/24 to Community Health Centre, Bhairamgarh. Site plan was prepared under Ex.P/17. During investigation memorandum of accused Poyami Bandi was recorded on 10-12-2000 under Ex.P/15. In pursuance of which one iron knife was seized from the possession of accused Poyami Bandi under Ex.P/16. Memorandum of accused Beko Pandroo was also recorded on 1-12-2000 under Ex.P/7. In pursuance of which a wooden piece (*katola*) & various other articles were seized under Ex.P/2. Postmortem on the body of deceased was conducted by Dr. A.S. Sendrom (PW-7), who prepared his report Ex.P/9. He noticed following injuries on the dead body :

1) Contusion in the right side of face in the size of 5" x 4".

2) Incised wound in the right side just below the right ear pinna in the size of 1" x ½" x ¼".

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3) Stab wound on the right side of chin in the size of ½" x ½" x ½".

4) Stab wound on the middle of chin in the size of ½" x ½" x ¼".

5) Contusion on the right side of neck in the size of 3" x 3".

6) Contusion on the left side of upper chest in the size of 3" x 2 ½".

In the internal examination, it was found that there was a compound fracture in the right mandible bone lower jaw and there was tearing of great vessel of neck with vascular supply to brain. According to the Doctor injuries No.1, 5 & 6 may have been caused by hard & blunt object and injuries No.2, 3 & 4 may have been caused by hard & sharp pointed object. The injuries were ante mortem in nature. Duration of injuries is in between 38 to 40 hours prior to the autopsy. He opined that cause of death was coma due to injuries No.1 & 5. Death was homicidal in nature.

3) After usual investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Dantewada, who in turn committed the case to the Court of Sessions Judge, Bastar, Jagdalpur, from where the matter was received on transfer by the Third Additional Sessions Judge, who conducted the trial.

4) The conviction of the appellants is based upon the sole testimony of eyewitness namely, Nandee Maso (PW-4).

5) Shri Bajaj, learned counsel for the appellants, argued that the evidence of the sole eyewitness namely, Nandee Maso (PW-4) is not reliable for the reason that he had disclosed the story on 1-12-2000 whereas the incident took

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place on 25-11-2000. No plausible reason has been laid down for late disclosure by the said witness. He was not normally residing in the house of Pandroo; therefore, his presence on the date of incident is doubtful.

6) On the other hand, Shri Shukla, learned counsel for the State, supported the judgment of conviction and order of sentence passed by the trial Court.

7) We have heard learned counsel for the appellants as also learned counsel for the State at length. We have also perused the records of Sessions Trial.

8) According to the prosecution, the incident had taken place in the night of 24-11-2000 in the house of accused Pandroo i.e. appellant No.1 and then the dead body was taken by both the appellants towards *gali* where it was ultimately seen by Sonaru (PW-2), who lodged the First Information Report to the Police Station.

9) Nandee Maso (PW-4) is the only eyewitness to the incident, who has been examined in this case. Vide para 1 of his statement he has stated that he was knowing the deceased and the deceased was murdered by accused persons namely, Beko Pandroo & Poyami Bandi. He has stated that some quarrel took place on account of demanding *Beedi* and in that quarrel Bandi assaulted the deceased with knife & Pandroo assaulted the deceased with a *Katola* (a piece of wood). They had assaulted him in the house of Pandroo. In the fateful night, he was present in the house of Pandroo. He had seen that both the accused persons had assaulted the deceased. He had also asked the accused persons not to assault. In para 2 of his statement he has stated that from *Katola* the deceased was assaulted on the head and from knife he was

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assaulted on the neck portion. He has further deposed that after the assault accused Pandroo has told him that he should not disclose this fact to anybody else and thereafter both the accused persons took the dead body from the house of Pandroo towards Bandlapal Gali. In the cross-examination, he has admitted that the house of Pandroo is situated in Koshtapara, Bhairamgarh, house of Bandi is situated in Jharamongiya and his house is also situated in Jharamongiya. He has also admitted that accused Pandroo is his maternal uncle. He has stated that he had gone for splitting wood in the house of Pandroo because they used to sale wood.

10) Learned counsel for the appellants argued that statement of Nandee Maso (PW-4) was recorded under Section 161 of the Cr.P.C. on 1-12-2000 whereas the incident/said to have been taken place on 24-11-2000. Therefore, there is a delay of about 7 days in recording the statement of this witness under Section 161 of the Cr.P.C. Admittedly, after the report on 25-11-2000 the Police party has come to the village and during the course of investigation, inquest on the body of deceased was prepared on 28-11-2000. At that time villagers were called and there is nothing on record to show that this witness was/present in the said village on the said date. The dead body was sent for postmortem examination to the Community Health Centre. After postmortem examination, the dead body was handed over to the family members, but on these occasions, nothing was disclosed by this witness to anybody else and ultimately on 1-12-2000, for the first time, his statement was recorded by the Police. What was the reason for remaining silent for a period of about 7 days? In this regard, there is no explanation by the Investigating Officer. However, the only explanation which comes in the evidence of this witness i.e. Nandee

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Maso (PW-4) is that he had not reported the matter because the accused persons had said to him that if he will report the matter, they will assault him. Whether on such explanation only, the version of this witness can be relied on.

11) In the matter of **State of U.P. vs. Satish**[1] the Supreme Court held as under :

> "Unless the investigating officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion. On the other hand, if the explanation is found to be implausible, certainly the court can consider it to be one of the factors to affect credibility of the witnesses who were examined belatedly. It may not have any effect on the credibility of the prosecution's evidence tendered by the other witnesses."

12) In the present case, so far as Investigating Officer is concerned, he has not given any explanation about the delayed examination of the witness. It is correct that no specific question has been asked to the Investigating Officer in this regard, but if we examine the evidence of Nandee Maso (PW-4) itself, he

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[1] (2005) 3 SCC 114

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has offered explanation by saying that accused persons had threatened him that if he will disclose the matter, they will assault him. Whether such explanation given by the witness for making discloser after about 7 days is plausible, In our considered opinion, such explanation does not appear to be plausible. It appears that no clue was received by the Police for a very long period. After about 7 days, statement of this witness was recorded and ultimately a general plausible explanation has been offered by this witness in a casual manner, which does not appear to be acceptable to us and for this reason, the version of this witness appears to be doubtful and not fully dependable. We are not inclined to accept the version of this witness because he laid a very late disclosure and the explanation offered by him does not appear to be plausible. The conviction of the accused/appellants cannot be sustained on the basis of testimony of this witness i.e. Nandee Maso (PW-4).

13) On examination of the record, we find that there are seizure of the weapons and the same were sent for chemical examination, but no chemical examination report has been received and has been produced by the prosecution. Except this evidence, there appears to be no any incriminating circumstance against the accused persons.

14) In view of the above discussion, we do not find that the conviction was possible on the sole testimony of Nandee Maso (PW-4) and seizure of weapons of offence about which no chemical examination report was received. The conviction is not based upon the cogent, legal & clinching evidence, which deserves to be set aside.

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Gowri	15) In the result, the appeal succeeds. Conviction & sentences imposed upon the accused/appellants under Sections 302 read with Section 34 & 201 of the Indian Penal Code are set aside. They are acquitted of the said charges. The appellants are in jail. They be set at liberty forthwith, if not required in any other case. Sd/- L.C.BHADOO Judge	Sd/- SUNIL KUMAR SINHA Judge